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83-118-I



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October 18, 1983

Mr. Delbert F. Downing  
Chairman  
Water Resources Board  
37 1/2 Pleasant Street  
Concord, New Hampshire 03301

RE: RSA Chapter 149-B

Dear Mr. Downing:

By memorandum dated September 13, 1983, you asked our opinion as to whether the licensing provisions of RSA ch. 489-B (Supp.), which statute regulates the construction of water wells and the installation of well pumps, apply to agencies of the State of New Hampshire. In response to your inquiry, please be advised that it is the opinion of this Office that the provisions of RSA ch. 489-B (Supp.) do not apply to agencies of the State of New Hampshire.

As is noted above, RSA ch. 489-B (Supp.) regulates the construction of water wells and the installation of well pumps. Among other things, it provides that "A person, before engaging in the business of constructing a well or installing a pump, shall obtain the proper license annually as a water well contractor or pump installer." RSA 489-B:5, I (Supp.). The act defines a "person" to be "an individual, partnership, corporation, association, or organization, or any combination thereof." RSA 489-B:2, VI (Supp.).

Our conclusion that the provisions of RSA ch. 149-B do not apply to New Hampshire State agencies is based in large part on the fact that no reference is made to such agencies in the statute's definition of the word "person." The New Hampshire Legislature



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could easily have defined the term "person" for RSA ch. 149-B purposes to include State agencies if it had wanted to do so. Reference is made in this regard to the definition of the term "person" which appears in RSA 147-B (Supp.), the law which establishes the State's Hazardous Waste Cleanup Fund. This statute defines the term "person" to include any "individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the state, or any interstate body." (Emphasis added.) RSA 147-B:2, IX (Supp.).

Our conclusion that RSA 149-B's licensing provisions were not meant to apply to New Hampshire State agencies also is based on our reading of RSA 149-B as a whole. RSA 489-B:2, II (Supp.) defines water well construction to mean and include "the industry, procedure and all operations engaged in by any person, full time or part time, for compensation or otherwise, to obtain water from a well by drilling, digging, or other method, for any purpose or use." RSA 489-B:5 (Supp.) contains a reference to the "trade" of installing and constructing water wells and pumps; and RSA 489-B:5 (Supp.)'s licensing requirement, by its terms, applies to "the business of constructing a well or installing a pump." These repeated references in the statute to the well installation and construction business suggest that RSA 149-B was primarily intended to regulate the activities of individuals and firms in the private sector who engage in the well installation and construction business. It does not appear that it was intended to regulate the activities of any New Hampshire State agencies that may be involved in this field.

On a related matter, we note that in your memorandum of September 13, 1983, you reference the fact that RSA 541-A "The Administrative Procedure Act" specifically excludes from its definition of the term "person" New Hampshire State agencies. Based upon a phone conversation we had with your office subsequent to September 13, 1983, we understand that your office feels that RSA 541-A's definition of the term "person" applies to both RSA 541-A

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and to RSA ch. 489-B (Supp.). In this regard, please be advised that the definition of the term "person" found in RSA ch. 541-A does not apply to RSA ch. 489-B (Supp.). The term "person" as used in RSA ch. 489-B (Supp.) controls the meaning of that word as it is used for RSA ch. 489-B (Supp.) purposes.

Based on the foregoing, it is our conclusion that the provisions of RSA 149-B do not apply to agencies of the State of New Hampshire.

Yours truly,



Edward L. Cross, Jr.  
Assistant Attorney General  
Environmental Protection Division

ELC, JR./tlr

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